

**Pearlstein McCullough & Lederman LLP**

641 Lexington Avenue \* Suite 1524 \* New York, NY 10022 \* T: 646.762.2833 \* [glederman@pmcounsel.com](mailto:glederman@pmcounsel.com)

July 21, 2017

The Honorable Daniel P. Fitzgerald  
Acting Justice of the Supreme Court  
Supreme Court New York County  
Part 65  
111 Centre Street, 5<sup>th</sup> Floor, Room 572  
New York, NY 10013

Re: Letter Dated July 19, 2017 from Assistant District Attorney  
Matthew Bogdanos to United States District Judge Katherine  
Polk Failla re *Lynda and William Beierwaltes v. Directorate  
General of Antiquities of the Lebanese Republic and the  
District Attorney of New York County. 17-CV-4755 (KPF)*

---

Dear Judge Fitzgerald:

We have been copied on a letter dated July 19, 2017 from Assistant District Attorney Matthew Bogdanos of the New York County District Attorney's Office ("DANY") to United States District Judge Katherine Polk Failla informing Her Honor of the informal conference that Your Honor, Mr. Bogdanos and I had earlier this week. In his letter Mr. Bogdanos explains his intention to proceed under Penal Law ("PL") Section 450.10, requiring the return of the Bull's Head to the Republic of Lebanon upon the expiration of a fifteen-day period from receipt by defendant or his counsel of the notice of request by Lebanon's Minister of Culture, unless extended by a court order. It is on this last point that we seek clarification from this Court.

As a threshold matter, we believe that the application of PL Section 450.10 is wholly inappropriate in this instance, as its proper use is in the context of a criminal action triggering the rights of a defendant; not only is there no defendant, there is no pending criminal action. Furthermore, as there is no *in rem* forfeiture under New York State law, we believe that DANY is misusing PL Section 450.10 to sidestep the requirements of a civil forfeiture action. We intend to brief this issue fully in our prospective motions before this Court.

Given DANY's representation to Judge Failla that it intends to proceed under PL Section 450.10, we request confirmation that this Court will not permit repatriation of the Bull's Head to Lebanon prior to an adjudication on the merits of the turnover proceeding that DANY intends to initiate in New York State Supreme Court. Although Criminal Procedure Law ("CPL") Section 690.55 authorizes this Court, which issued the search warrant in this matter, to determine the ultimate disposition of the Bull's Head, the two

The Honorable Daniel P. Fitzgerald  
July 21, 2017  
Page Two

statutes are not necessarily mutually exclusive: DANY could attempt to repatriate the Bull's Head to Lebanon within fifteen days from July 19<sup>th</sup>, notwithstanding that this Court could later determine that its ultimate disposition is adverse to DANY's position. Hence, we request that this Court issue an order directing DANY not to repatriate the Bull's Head prior to this Court's adjudication of this matter pursuant to CPL Section 690.55.

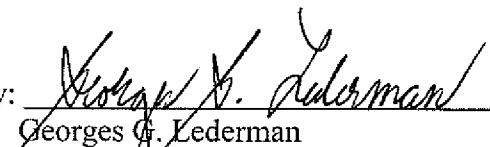
It bears mentioning that in an earlier letter dated June 29, 2017 to Judge Failla, Mr. Bogdanos represented that DANY had no intention of repatriating the Bulls Head to Lebanon prior to an adjudication of the above-referenced federal action. He further indicated that he would alert Judge Failla should DANY's position change, which now appears to be the case.

Should this Court not be inclined to issue an order pursuant to this letter, we will have no choice other than to seek to enjoin DANY either before this Court or Judge Failla.

We await guidance from Your Honor on this limited issue under circumstances that may necessitate our moving for immediate emergency relief.

Respectfully submitted,

Pearlstein McCullough & Lederman LLP  
*Attorneys for Lynda and William  
Beierwaltes*

By:   
Georges G. Lederman  
641 Lexington Avenue, Suite 1524  
New York, NY 10022  
Telephone: (646) 762-2833  
Email: [glederman@pmcounsel.com](mailto:glederman@pmcounsel.com)

The Honorable Daniel P. Fitzgerald  
July 21, 2017  
Page Three

cc: The Honorable Katherine Polk Failla  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007  
(via email [Failla\\_NYSDChambers@nysd.uscourts.gov](mailto:Failla_NYSDChambers@nysd.uscourts.gov))

Matthew Bogdanos  
Assistant District Attorney  
District Attorney New York County  
One Hogan Place  
New York, NY 10013  
(via e-mail [bogdanosm@dany.nyc.gov](mailto:bogdanosm@dany.nyc.gov))

Patricia Bailey  
Assistant District Attorney  
District Attorney New York County  
One Hogan Place  
New York, NY 10013  
(via e-mail [baileyp@dany.nyc.gov](mailto:baileyp@dany.nyc.gov))